89-1779

Supreme Court, U.S.
FILED
MAY 14 1990
JOSEPH F. SPANIOL, JR.
CLERK

NO:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

BEULAH V. BOOKER,
PETITIONER

versus

PAUL D. RILEY, JUDGE, et al.,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO
SIXTH CIRCUIT COURT OF APPEALS

PETITION FOR CERTIORARI

BEULAH V. BOOKER
643 Miami Chapel Rd.
Dayton, Ohio 45408
(513) 228-2550

QUESTIONED PRESENTED FOR REVIEW

1. Whether or not a state judge in a worker's compensation injury be granted judicial immunity when he conspired and dismiss the complaint which had been refused to be dismiss by two state judges and the Appeal court. The attorneys failed to file for occupational disease but file for dismissal on grounds that Plaintiff failed to file her appeal correctly, which the Judge refuse to dismiss and call it "moot."

2. Whether or not the Appeal Court and the District Court denied Petitioner her constitutional rights, 42 U.S.C. 1983, Pierson v. Ray, 386 U.S. 547. (1967); Ashelman v. Pope, 793 F .2d 1072 (9th Cir. 1986).

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OPINIONS BELOW

The opinion of the United States Sixth Circuit Court of Appeals is reported at Booker v. Riley, et al, 89-5663. The opinion of the United States District Court for the Southern District of Ohio Western Division is reported at Booker v. Riley, et al, C-3-87-354.

JURISDICTION

The Judgment of the U. S. Court of Appeal was entered on March 13, 1990; see Booker v. Riely, et al, Appendix A. This petition for Certiorari to the Supreme Court is filed within sixty (60) days of the Judgment below.

The Statutes under which the Appeal to this court is 28 U.S.C. 1254 (3), 28 U.S.C. 1255 (2).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment of the Constitution provides;

> Congress shall make no law adbridging the freedom of speech or the right of the people to petition the Government for a redress of grievances.

The Seventh Amendment of the Constitution provides in pertinent parts;

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

The Fourteenth Amendment of the Constitution provides in pertinent parts;

> All persons born or naturalized in the U.S.A. and subject to the jurisdiction thereof are citizens of the U.S.A. and of the State... no state shall make or enforce any law which shall abridge the priviliges or immunities or citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This case involves three separate actions; a former county visiting judge, Paul E. Riley, an attorney-at-law, Gary T. Brinsfield and a Corporation, Delco Moriane, G.M.C., who was sued by Petitioner, Beulah W. Booker, in the United States District Court for the Southern District of Ohio for conspiracy, 42 U.S.C. Section 1985, discrimination, 42 U.S.C. Section 1981 and deprivation of rights, 42 U.S.C. Section 1983, on 7-15-1987. In 1987, Petitoner had a worker's compensation trial in Montgomery County Common Pleas Court by visiting Judge Paul E. Riley, where Petitioner stated she had an unfair trial, which the record will show.

This case had been pending in court since 1983 and had been assigned to Judge Wolfe until he moved up and was replaced by Judge Richard Dodge, who

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not agree on a settlement Judge Dodge stated he was the trial Judge and all motions that he had ruled upon would stand: Due to the fact this was a civil case (at this time he was trying a criminal case which would run over into the time for this case) he refused to postpone this case again; he would transfer this case to a visiting Judge, Judge Paul Riley for trial to began as schedule. At this time Defendant attorney, Joseph P. Buchanan, asked to be withdrawan from the case and that attorney Gary T. Brinsfield be assigned attorney of record to the case. The next day when Plaintiff went to work it was told in front of her by Plant protection to some of her subpoena witnesses that the trial was cancelled. Other subpoenas which was supposed to be delivered to her other witnesses by the Sheriff department was returned.

She immediately contacted Judge Dodge's office who confirmed trial was still on. Plaintiff filed a list of contemps including one for each of her doctors who performed surgeries on her, who had tried to evade their subpoenas and for witness harassing.

On January 24, 1986, trial began only three of Plaintiff witnesses was there out of about twenty or thirty. These witness was to testify to how they had been injuried and how other employees had been injuried at work and to Plaintiff injuries.

On the morning of the trial when Plaintiff went to Judge Riley Chambers Attorney Gary T. Brinsfield was already there in the chambers discussing the trial. Plaintiff introduce herself to Judge Riley as the Plaintiff, he replied Mrs. Booker drop your complaint you are not going to talk about being injuried in

my courtroom do you understand?. Judge Riley & Gary Brinsfield both stated drop your complaint and go back home, you are not going to win; Gary Bringsfield stated you are going to lose badly and pay all fees, this I promised. Plaintiff stated this is not just an injury but a force injury, I have proof by my disciplinary write up, (these were the same words forced injury & disciplinary-write-up that Plaintiff explain to Judges Wolfe & Dodge which is also in the record). Plaintiff told Judge Riley and Attorney Brinsfield to look at her hands, she had two cockup splints on elbow length where they had been damaged and she had lost 85% use of both hands, one hand had been operated and the other was pending for an operation for the same problem, and that she had six doctors statement to those facts. Judge Riley constantly

stated you are not going to talk about being injuried in my courttoom this I promised you. Attorney Brinsfield stated go home and file something else; they both spoke in loud tone voices in the present of witness, Joe L. Robinson, who gave a sworn affivadit to these facts. Petitioner refused to leave and stated, she was promised a jury trial by Judges Wolfe & Dodge and this is what she wanted.

Judge Riley ordered court to began; a jury was seated. Judge Riley told attorney Bringsfield to explain the law to the jury; following this he told Plaintiff to make her opening statement. As she began, Brinsfield stated, your honor I think I am going to object, throughout her opening statement, there was many interruptions, outbursts & interferring by Brinsfield & Judge Riley, however, the words objections &

overrule was not use, say nay and so was used instead by them. It was so loud that Petitioner explain to the jury that she hoped they would understand what is going on. Judge Riley stated to her I told you, you were not going to talk about being injuried. When she object and stated she was going to appeal, he replied I don't care if you appeal it to God, you are not going to talk about injuried in my courtroom, I told you this before Court started. He than told Attorney Brinsfield to make his opening statement which had no interruptions, he had the run of the court, could speak on whatever he wanted. Plaintiff stated Brinsfield had two opening statements & she only one, Judge Riley stated so! He told her to call her witnesses & warned her not to talk about injuries.

Plaintiff first witness, Joe L.

Robinson, stated he came to her department at various times, one day in particular, he saw her sitting on her job with both hands in the air, tears streaming her face. He also witness her being disciplinary, he further testified that he went to the doctors with her and witness what they said about her condition, he also read their reports. Plaintiff two other witnesses was not allowed to talk about her nor their injuries. There was no other witnesses present to call. Plaintiff asked Judge Riley would he honor her contempt she had placed against the absentee witnesses. He stated no He would not, if you want these witnesses go get them yourself, I told you earlier in my chambers I'm not honoring nothing on your behalf. Trial was postpone until the next day.

On the second day of trial, a few other witnesses did show but was refrain by Judge Riley from talking about Plaintiff or their own injuries. One of her expert witness, Dr. Martinez, who performed surgery on her hand finally showed up after Judge Riley call him by telephone. He changed his testimony from what he had written down in Plaintiff medical record and which was in the court record. Plaintiff union representative who was supposed to testify to her discipline stated, he was not coming but going fishing. She asked Judge Riley to enforce the contempt, he replied no way.

On the third day of trial, the Defendant brought some of Plaintiff witnesses to court. Nurse, Karen Lininger, testified that Plaintiff did come to medical on various days. She stated she came up on the 12, 13,

& 18 of May 1982, stating she had injuried her hands, & that medical treated them. Plaintiff states, this is one of the same days herwitness Joe L. Robinson, stated he saw her on the job with her hands in the air crying. Another of Plaintiff witness, Jim Keaton, foreman was brought in by Defendant, but subpoena by her, testified to discipline (writing her up)on one of those days for refusing to continued working; he gave her the balance & thirty days without pay, the next step was to be fired.

Earlier, Plaintiff had motion to have Joe L. Robinson in the courtroom with her for moral support. During the pre-trial conference with Judge Dodge he granted that motion. However, at the trial when Judge Riley opened Court, Attorney Brinsfield motion for separation of witnesses because of

Robinson testimony, which was granted. However, Don Abbott, personnell manager, one of the Defendat star witness remained inside the courtroom even when Plaintiff protested. When Plaintiff witnesses came to testify to testify and saw Don Abbott it damaged their testimony for fear of repercussion.

When Plaintiff had no more witnesses to call or could not talk about her injuries, attorney Brinsfield made a motion for a Direct Verdict, & asked to write out his own dismissal, which was granted by Judge Riley. He placed in it what he wanted, attorney fees and court costs as he had promised Plaintiff in Judge Riley chambers before trial began. Plaintiff refused to sign it.

After Plaintiff was denied and could not enforce her rights in state

court, she filed a complaint in Federal Court against Judge Riley, Gary T. Brinsfield & Delco Moraine, G.M.C. for discrimination, conspiracy & deprivation of rights, judgment & injunctive relief. Plaintiff filed a list of authorities; 42 U.S.C. 1981 discrimination, Daniel v. Board of Ed. of Ravenna School Dist., 805 F .2d 203 207 (6th Cir. 1986), conspiracy, 42 U.S.C. 1985 Flagg Bros. v. Brooks, 436 U.S. 149, 155 (1978), deprivation of rights, 42 U.S.C. 1983, Martin-Marietta Corp. v. Bendix Corp. 690 F .2d 558 (6th Cir. 1982). Plaintiff submitted a sworn affividavit by Joe L. Robinson who was an eye witness to Defendants harassing of her and depriving of her rights. Plaintiff asked the court for a jury trial under the seventh amendment of the Constitution. She sub-

mitted several returned subpoenas from witnesses the Sheriff did not deliver from her trial with Judge Riley.

In the District Court,she submitted among her list of witnesses several Judges, Judge Richard Dodge & Judge Wolfe to testify to their action with the case. Defendant Riley filed for judicial immunity, Defendants Brinsfield & Delco Moraine asked for summary judgment. Judge Rice immediately granted Defendant Riley didmissal and sustained Defendants Brinsfield and Delco Moraine and overruled all of Plaintiff motions. He stated if Plaintiff wanted to refile or amend Judge Riley under Pulliam v. Allen, 466 U.S. 522 (1985), he would look at it. Plaintiff did refile, however, Judge Rice dismiss the case of all Defendants and order Plaintiff to pay their fees.

Plaintiff appeal her case to the Sixth Circuit Court of Appeals who affirmed the lower court decision and stated she presented no evidence.

ARGUMENT IN FAVOR TO THE PETITION FOR WRIT OF CERTIORARI.

The Sixth Circuit Court of Appeals affirmed the District Court decision that a Judge has judicial immunity. Petitioner states this is true when his act is judicial. Petitioner states a state judge conspired with two Defendants Delco Moraine & Gary T. Brinsfield to deprived her of her constitutional rights, a right to a trial under the seventh amendment and a fair trial under the fourteenth amendment. This case had been set-up for a jury trial by two other state Judges. Delco Moraine had used a total of five

lawers and had not beenable to get this case dismiss nor did they file a motion that this case be changed to occupational disease from injuries.

In another case Robinson v. Delco Moraine, et al, 85-3569, with the same Defendant and a worker's compensation case the Appeal Court of the Sixth Circuit stated, this Plaintiff was injuried, however the case was dismissed on failure to prosecute based upon the Defendant stating Plaintiff use a lot of attorneys, he stated Plaintiff hired and fired at will. The Appeal Court further stated, that probably with recover, Plaintiff could have taken against his former attorney who failed to prosecute, they further stated since Plaintiff did not name the state judge & his attorney as conspiracy they dismissed the casebecause it lack subject

matter jurisdiction. Petitioner states these same Defendants (Delco Moraine) used five attorneys who erred in presenting this case and could not get it dismissed. After they could not get it dismissed they conspired with the state Judge, Paul E. Riley against Petitioner & denied her constitutional rights.

On March 13, 1990, The Sixth Circuit affirmed the lower court dismissal of Paul Riley on judicial immunity for conspiracy, however, in Robinson v. Delco Moraine, supra, this same court of Appeals stated, "it is elementary that under 42 U.S.C. 1983, Flagg Bros v. Brooks, 436 U.S. 149, 155 (1978), that state action must exist to support a claim". "It is true that a private individual or entity who conspires with state officials to deprive a citizen of his constitutional rights maybe held

accountable under section 1983, Martin Marietta Corp. v. Bendix Corp., 690 F .2d 558 (6th Cir. 1982)".

In Stump v. Sparkman, History of Judicial Immunity, 1980 Duke L.J. 879, Judge Stumps actions were not judicial and hence that judicial immunity did not protect those actions...whether an act is judicial depends on the character of the act Ib 916. Petitioner states Judge Riley act was not judicial. Harris v. Harvey, 605 F .2d 330 (7th Cir. 1979) 445 U.S. 938 (1980), concerns a 1983 action by a black police officer against a state judge, the Court of Appelas the the Seventh Circuit denied the judge's defense of judicial immunity on the grounds that Judge Hawkey's attack on Plaintiff were not part of his duties Id 337.

Petitioner states that on the morning of the trial & throughout Respon

dents Riley & Brinsfield attacked her the same as the state Judge attacked the black policeman. In Bradley v. Fisher, 13 wall 335, 347 20 L.E.d 646 (1872) Powell noted that the Bradley court accepted the injustice doctrine of judicial immunity sometimes imposes because those injustices are usually mitigated by the avialiability of appeal. But where a jucicial officier acts in a manner that precludes all resort to appellate or other judicial remedies that otherwise would be avialable, the underlying assumption of the Bradley doctrine in inoperative... In sum I agree with Mr. Justice Steward that Petitioner judges actions were not "judicial" & that he is entitled to no judicial immunity from suit under 42 U.S.C. 1983 Id. 370.

Judge Rice granted Respondents

Riley judical immunity & the other Respondents summary judgment with knowledge of the affivadit, transcript & the record. Rankin v. Howard, 633 F .2d 844 (9th Cir. 1980), the Rankin court concluded that a judge's private jurior agreement to decide in favor of one party is not a judicial act., 633 F .2d at 847. Petitioner states and the record will show that Respondent Riley had a prior agreement to decide in favor of the Defendant Delco Moraine. Looking at the record of the District Court & the way Judge Rice dismiss the case his acts was in a manner that precludes all resort to appell. Judge Rice ordered Petitioner to pay the Respondents fees. Petitioner feels and the record will show this was a retialiation of him against her for filing because she refused to drop her original

complaint in state court where she was abused by Judge Riley, et al. Retialiation is itself discrimination Winston-v. Lear-Sigler,558 F .2d 1266 (6th Cir.) Judge Rice conspired alone with the other Respondents to deprive Petitioner of her rights guarantee by the Constitution under the First amendment for redress, the Seventh amendment trial by jury and the Fourteenth amendment, equal protection of the law. 42 U.S.C. 1986, action for neglect to prevent, in pertinent parts, every person who, having knowledge that any of the wrongs conspired to be done, & mentioned in Section 1985, of this title, are about to be committed, & having power to prevent or aid in preventing the commission of the same, neglects or refuses to do, if such wrongful act be committed, shall be liable to the party injured... for all damages caused by such wrongful act

which such person by reasonable diligence could have prevented...

Judge Rice was well aware of Judge Wolfe orders overruling Defendant motion to dismiss as moot on April 9, 1985. He was further aware of Judge Dodge order on January 13, 1986, setting pre-trial conference for attorneys to review their files prior to pre-trial and to be prepared to discuss discovery matters, which Defendant, Delco Moraine failed to do.

The Appeal Court & Judge Rice was aware the Defendants admitted to the following; (1) Plaintiff had planned to call thirty four witnesses, Joe Robinson testified to seeing her in May, 1982 working divider plate job (where she injuried both hands) with both hands in the air crying; that the court refused to honor her contempt.

some of her black witnesses suffer lapse of memory, that Dr. Martinez was called by Judge Riley and did change his testimony, that Plaintiff went to medical at various times in May 1982, on 12-18 and was complaining of hurting her hands and was treated, that Jim Keaton, supervison (white) in 513 department did discipline her on those days, that nurse, Karen Liniger, (white) read from Plaintiff medical report that on 5-12-82, at 9:30 A.M. Booker came to medical complaining of both hands aching, wrist weaking and applied heat and wrap both hands, that Plaintiff witness, Joe L. Robinson, was ordered out of the courtroom but Don Abbott, Defendant witness was not order out of the courtroom, they did not deny the fact that Brinsfield had two opening statement as the transcript will show.

CONCLUSION

Petitioner, Beulah W. Booker, respect and pray that this Honorable Court grant her petition for a Writ of Certiorari according to Rule 17 (c) of the Supreme Court of the United States; when a Federal Court of Appeals has decided a Federal conflict in a way in conflict with appelicable decisions of this court.

The Sixth Circuit Court of Appeals made two different decision in alike cases. In Robinson v. Delco Moraine, et al, supra, they stated when a individual or entity conspires to deprive a citizen of his constitutional rights maybe held accountable under Section 1983. In Booker v. Riley et al, 89-3663, they affirmed the District Court decision who granted Riley immunity and the other Defendants summary judgment.

They further affirmed that when a black Plaintiff uses five attorneys he is hiring and firing at will but when white Defendants uses five attorneys who forget to file a motion , they are granted summary judgment, which is itself discrimination, Daniel v. Board of Education of Ravenna Sch. Dist., supra,.

Petitioner pray that the Respondents be held liable and not be given judical immuninty nor summary judgment on conspiracy and the case be reversed back to the original lower court where Judge Wolfe dismissed the Defendant (Delco Moraine) motion as moot, he stated Plaintiff had followed the law. Petitioner pray she be granted worker's compensation.

Respectfully Submitted,

Beulah W. Booker

Beulah W. Booker
643 Miami Chapel Rd.
Dayton, Ohio 45408
(513) 228-2550

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of May, 1990, three copies of the foregoing document were deposited in a United States mailbox, postage pre-paid and served upon Thomas E. Jenks/ Christoper F. Johnson Attorneys at Law 205 East First Street Dayton, Oh. 45402 (Counsel for Defendant Riley). John D. Donaldson Attorney at Law 2580 Kettering Tower Dayton, Oh 45423 (Counsel for Defendant Gary T. Brinsfield). Joseph P. Buchanan Attorney at Law 2580 Kettering Tower Dayton, Oh 45423 (Counsel for Defendant Delco Moraine, GMC).

Beulah W. Booker
Beulah W. Booker

Subscribed to and sworn to
before me on this the 11th day of
May 1990

James G. Miller

JAMES G. MILLER, Notary Public
In and for the State of Ohio
My Commission Expires Mar. 6, 1994

APPENDIX I

No. 89-3663

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BEULAH W. BOOKER,
Plaintiff-Appellant
vs.
PAUL E. RILEY, JUDGE; GARY T. BRINSFIELD; DELCO MORINE, GMC,
Defendants-Appellees

BEFORE: MARTIN and BOGGS, Circuit Judges; and BROWN, Senior Circuit Judge.

This case has been referred to a panel of the court pursuant to Rule 9 (a), Rules of the Sixth Circuit. Upon examination of the record and the briefs this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34 (a).

Plaintiff Booker filed a civil rights action under 42 U.S.C. 1981, 1983 and 1985 in which she claimed that the named defendants acted to deny her a fair state court trial in her employment injury case. The district court granted summary judgment for all

defendants and this appeal followed. The parties have briefed the issues, Plaintiff proceeding without counsel.

Upon consideration, we find that there is no genuine issue of material fact and that the defendants are entitled to judgment as a matter of law. Canderm Pharmacal, Ltd. v. Elder Pharmaceuticals, Inc., 862 F.2d 597 601 (6th cir. 1988). The record before us does not contain any evidence in support of plaintiff Booker's claim.

Accordingly, the district court's judgment is affirmed. Rule 9 (b) (5), Rules of the Sixth Circuit.

ENTERED BY ORDER
OF THE COURT.

Leonard Green, Clerk
March 13, 1990

APPENDIX 2

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

BEULAH W. BOOKER,
Plaintiff,
vs.
GARY T. BRINSFIELD,
et al.,
Defendants

Case No.
C-387-354

DECISION AND ENTRY SUSTAINING MOTION OF DEFENDANTS BRINSFIELD AND DELCO MORAINE DIVISION, GENERAL MOTORS CORPORATION, SEEKING SUMMARY JUDGMENT (Doc. #20) AND OVERRULING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (DOC. #21); JUDGMENT TO BE ENTERED IN FAVOR OF DEFENDANTS AND AGAINST PLAINTIFF: MOTION FOR UNITED STATES MARSHAL TO DELIVER SUBPOENAS AND FOR MIXED JURY (DOC. #22) DEEMED MOOT: TERMINATION ENTRY

Based upon the reasoning and citations of authority set forth in the Memorandum filed by the Defendants in support of their Motion for Summary Judgment (Doc. #20) and, further, based upon the attachments to said Memorandum, this Court deems said Motion to be well taken and same is, therefore,

sustained in its entirety. Having granted the Defendants' Motion for Summary Judgment, this Court overrules a similar Motion for Summary Judgment filed on behalf of the Plaintiff (Doc. #21) and orders the entry of judgment in favor of the Defendants and against the Plaintiff herein.

In addition to the foregoing, the Court makes the following, non-exclusive, observations:

1. Pursuant to the recent United States Supreme Court opinion in Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), "Summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the non-moving party. At the summary judgment stage, the trial judge's function

is not himself to weigh the evidence and to determine the truth of the matter but to determine whethere there is a genuine issue for trial. There is no such issue unless there is sufficient evidence favoring the non-moving party (in this case, Plaintiff herein) for a jury to return a verdict for that party. In essence, the inquiry is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." The latter is the situation in the case at bar. The evidence in support in support of the Plaintiff's claim is either non-existent (with regard to race or sex discrimination) or, where a scintilla of evidence does exist (i.e. state actor and/or conspiracy), same is so one-sided that the Defendants must

prevail as a matter of law.

2. Plaintiff alleges that her employer and her employer's attorney conspired with the Common Pleas Court Judge to deprive her of a fair trial on account of her race and sex in violation of 42 U.S.C. 1981, 1983 and 1985. Athough neither the employer nor the attorney would normally be a state actor, conspiracy with the state actor, herein the Judge, can convert otherwise private conduct into state action. Tower v. Glover, 467 U.S. 914, 920 (1984). Accordingly, the 1983 claim is, therefore not automatically subject to dismissal. Furthermore, there is evidence that the trial judge and the Defendants' attorney jointly tried to get the Plaintiff to drop her case and to file an alternative worker's compensation claim, to wit: an occupational

disease claim rather than an accidental injury claim. These facts are probably sufficient to permit an inference of an agreement for purposes of both 1983 and 1985.

3. Plaintiff's contention is that, in addition to the Defendant's joint attempts to get her to withdraw the appeal and to file an alternative worker's compensation claim, her efforts to present her case in court were inhibited by actions of the Judge,whereas the opposing attorney's efforts were not. In addition, the Plaintiff claims that the viability of her case, notwithstanding the Defendants' actions, is demonstrated by its having been scheduled for trial by Judge Dodge without objection from the employer's other attorney.

4. The Plaintiff has failed to show disparate treatment from which

discriminatory intent can be inferred and from which a violation of the fourteenth amendment equal protection guarantees and/or 1981 could be demonstrated. Assuming that the Plaintiff and the defense attorney in the state court proceeding are similarly situated for purposes of disparate treatment analysis, the transcript of the trial proceedings shows that the Defendant's attorney's efforts, which were received favorably by the Court, were well grounded in the law, whereas the Plaintiff's efforts which allegedly were inhibited, were not so well grounded.

5. The fact that a previous judge scheduled the case for trial, without objection from the previous defense attorney, in absolutely no way indicates any evaluation of thesufficiency of Plaintiff's evidence by that previous judge or attorney, or even that they

could have known, at that juncture, what evidence Plaintiff might be able to produce. At this juncture, the Court concludes that there is absolutely not that first scintilla of evidence of discriminatory intent with regard to sex or race. Assuming that the trial judge attempted to talk the Plaintiff out of proceeding with her case, in order to persue the alternative of dismissing same and filing for relief under the Occupational Disease Section of the Worker's Compensation Law, this court concludes that while such action might not have been a preferred judicial approach, a reading of the trial transcript reveals that the trial judge was absolutely correct in his analysis of the Plaintiff's case. Plaintiff's evidence is totally devoid of an accidental injury under the Worker's Compensation Law. whereas evidence of an

occupational disease abounds throughout the file. The transcript of the trial proceedings reveals that the Plaintiff received the fairest of trials from trial judge Paul Riley, that his rulings were uniformly correct and that he "bent over backwards" to protect the Plaintiff rights before the jury. There is no evidence that any conduct of any of the Defendants violated any of the Plaintiff rights protected by 1983, even assuming, arguendo, that one can infer the existence of an agreement between the Judge and the Defendants from their efforts to get the Plaintiff to withdraw her case. Even if one would infer an agreement between the Judge and the Defendants on the basis of that conduct, there is no evidence in the trial transcript from which an inference can be made that such an "agreement" extended to the conduct of the Defendants at trial.

6. The trial transcript, certified as required by Fed. R. Civ. P. 56, reveals that the defense attorney was not given the opportunity to make two opening statements, that the objections of the defense attorney were properly ruled upon, that the Plaintiff herein totally failed to show a compensable accidental injury within the meaning of the Ohio Worker's Compensation Law and, finally, that no ruling of the trial judge prohibited the Plaintiff's witness, Joe Robinson, from testfying that he "saw Plaintiff working on a job which was injuring her."

7. In short, there is no evidence, whatsoever, in the record upon which an allegation of discrimination on the basis of sex could be sustained. Further, there is no evidence in the record upon which areasonable jury could conclude that the Plaintiff has been

Defendants and against the Plaintiff herein.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for theSouthern District of Ohio, Western Division, at Dayton,

Walter H. Rice
United States District Judge

APPENDIX 3

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

BEULAH W. BOOKER,
Plaintiff-Appellant
vs
PAUL E. RILEY, JUDGE, et al.,
Defendants

Case No. C-3-87-354

DECISION AND ENTRY ON PENDING MOTIONS (MOTIONS FOR MORE DEFINITE STATEMENT BY DEFENDANTS BRINSFIELD (DOC.#2) AND DELCO MORAINE DIVISION OF GENERAL MOTORS CORPORATION (DOC. #4) OVERRULED: MOTION TO DISMISS BY DEFENDANT PAUL RILEY (DOC.#3) SUSTAINED JUDGMENT TO BE ENTERED IN FAVOR OF DEFENDANT RILEY AND AGAINST PLAINTIFF: PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (DOC. #7) OVERRULED, WITH LEAVE TO RENEW.

The motions of the Defendant Brinsfield (doc. #2) and the Defendant Delco Moraine Division of General Motors Corporation (Doc.#4), each seeking a more definite statement, pursuant to Fed. R. Civ. P. 12 (e), are each deemed to be not well taken and each is, therefore, overruled in its entirety, in view of the fact that the Court concludes that

the Plaintiff's complaint, rambling and conclusory though it might be, is not so vague or ambiguious that the moving Defendants cannot reasonably be required to frame a responsive pleading thereto.

The Motion of the Defendant, Paul E. Riley, seeking an Order of the Court dismissing the Plaintiff's complaint as to him (Doc.#3), upon the ground that said Complaint fails to state a claim upon which relief can be granted, said motion filed pursuant to Fed. R. Civ. P. 12 (b)(6), is deemed by this Court to be well taken and same is, therefore sustained in its entirety. In so ruling this Court concludes, pursuant to the reasoning and citations of authority set forth in the Memorandum of the moving Defendant in support of his motion, that the movant is indeed protected by the well established doctrine of judicial immunity.[1] Judgment will be ordered

A preliminary pretrial conference, by conference call telephone communication, will be established by this office for the purpose of setting a trial date and other dates leading to the expeditious resolution of this litigation.

Walter H. Rice
United States District Judge

APPENDIX 4

See Bill v. Hummel, 835 F .2d 877 (Table) (6th cir. 1987) Full text avialable at 1987 U.S. App. LEXIS 15690).

IN THE COMMON PLEAS COURT OF
MONTGOMERY COUNTY, OHIO

BEULAH N. BOOKER,
Plaintiff,
vs

Case No. 85-0009
(Judge Richard Dodge)

DELCO MORAINE DIVISION
GENERAL MOTORS CORPORATION,
et al.,
Defendants

AMENDED ORDER SETTING PRETRIAL CONFERENCE IN CHAMBERS FEBRUARY 5, 1986 At 4:15 P.M.

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This case is hereby set for a pretrial conference in chambers on the 5th day of February, 1986 at 4:15 p.m. (A PREVIOUS ORDER SETTING THIS MATTER FOR A PRETRIAL CONFERENCE BY TELEPHONE WAS INCORRECT).

THE ATTORNEYS ARE ORDERED TO REVIEW THEIR FILES PRIOR TO PRETRIAL, AND TO BE PREPARED TO DISCUSS DISCOVERY MATTERS, APPLICABLE PRETRIAL MOTIONS, AND SETTLEMENT POSSIBILITIES. Counsel are required to meet one week prior to the pretrial to seek an amicable disposition.

SO ORDERED:

RICHARD S. DODGE, JUDGE

APPENDIX 5

IN THE COMMON PLEAS COURT OF
MONTGOMERY COUNTY, OHIO

BEULAH M. BOOKER,
Plaintiff,
vs.
DELCO MORAINE DIVISION
GENERAL MOTORS CORPORATION
et al.,
Defendants

Case No. 85-0009
(Judge William H.
Wolff, Jr.)

ORDER

Defendant Delco Moraine Division General Motors Corporation, moved the Court to dismiss on March 11, 1985.

On March 19, 1985, the Plaintiff filed an amended complaint, and on March 26, 1985, the defendant, Delco Moraine, answered the amended complaint.

It appears that the plaintiff has substantially complied with Section 4123.519, and the motion to dismiss is OVERRULED as moot.

Copies of this Order were sent to parties listed below by ordinary mail this date of filing.

APPROVED:

WILLIAM H. WOLFF, JR., JUDGE